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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/855,021 | 05/15/2001 | Mark Jasen | P 281228 | 8002 |

7590 02/08/2005
Pillsbury Winthrop LLP
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McLean, VA 22102

EXAMINER

WILLETT, STEPHAN F

ART UNIT PAPER NUMBER

2141

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 09/855,021 | Applicant(s) JASEN ET AL. | |
| | Examiner Stephan F Willett | Art Unit 2141 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-73 is/are pending in the application.
- 4a) Of the above claim(s) 22-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 34-73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21 and 34-73, drawn to QOS of a user, are classified in class 709, subclass 242.
 - II. Claims 22-33, drawn to remapping ports based on QOS, are classified in class 709, subclass 239..
2. The inventions are distinct, each from the other because:

The claims in Group I involve steps to applying QOS to a user, while the claims in Group II specifically involve remapping based on ports, which is classified in a different class from Group I.
3. Inventions I, and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as to apply QOS to a user. In the instant case, invention II has separate utility such as to apply QOS to ports. See MPEP § 806.05(d).

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4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Because these inventions are distinct for the reasons given above and the searches required for Group I is not required for Groups II, restriction for examination purposes as indicated is proper.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed (37 CFR 1.143).

7. Applicant's election without traverse of claims 1-21 and 34-73 by Jean-Paul Hoffman by telephone on 1/25/05 is acknowledged.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 1-21, 34-73 are rejected under 35 U.S.C. 102(e) as being anticipated by Colby et al. with Patent Number 6,449,647.

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3. Regarding claim(s) 1, 7-8, 14-16, 34-35, 40-41, 46-47, 53-54, 60-61, 67-68, Colby teaches TCP ports receiving network communications of different levels of priority, col. 5, lines 57-63 and col. 6, lines 25-33. Colby teaches a coupon to identify priority, col. 6, lines 49-52. Colby teaches determining and directing flow to the port based on priority, col. 7, lines 63-65. Colby teaches flow remapping, col. 6, line 41.
4. Regarding claim(s) 2, 5, 11-12, 19, , 38, 44-45, 50, 57-58, 62, 66, 71, Colby teaches URL or IP address priority on the Internet, col. 6, line 56.
5. Regarding claim(s) 3, 13, 52, 59, 73, Colby teaches no prioritization, col. 7, lines 38-40.
6. Regarding claim(s) 4, 10, 18, 37, 43, 49, 56, 65, 70, Colby teaches QOS, col. 6, line 56.
7. Regarding claim(s) 6, 9, 17, 36, 42, 48, 55, 64, 69, Colby teaches customer values, col. 7, lines 6-7.
8. Regarding claim(s) 20, 39, 51, 72, Colby teaches user information at log-in or setup, col. 10-11, lines 60-3; col. 7, lines 24-32.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited. A close review of the references is suggested. A close review of the Khaunte reference with Patent Number 6,546,017 is suggested. The other references cited teach numerous other ways to adapt QOS to users, thus a close review of them is suggested.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The

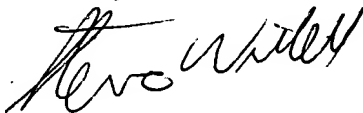
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examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

12. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9605.

sfw

A handwritten signature in black ink, appearing to read "Rupal Dharia", is written over the "sfw" text.

January 27, 2005